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Legal Education: Confronting Reality and Too Many Siblings

*Ralph Slovenko**

WHAT DO WE—all of us—want out of legal education? Why is there so much concern and dissatisfaction with regard to the third, and to some extent, the second year of the curriculum? Questions most often raised are: What does one want or expect of legal education?; why is there so much dissatisfaction?; what really is the problem, and what can be done about it?

It seems apparent that one primary function of a law school is to develop professionalism. To accomplish this, three years seems to have been chosen as the magic number. Many students, however, complain that they are bored and that they are no longer challenged after the second year. The question arises, therefore, should they be allowed to graduate in two years rather than adhere to the usual prescribed six semesters? Some of us would agree with the students when they say they may even do better given a job opportunity. Some of the enthusiasm may even be dulled by an enigmatic third year. It has been said that school tends to promote dependency and that too lengthy an academic period diminishes self-reliance. They can point out that law requires a certain basic knowledge of a process, but beyond that it is a matter in each individual case of ferreting out necessary information. A longer period of training may result in improved scholarship, but the ordinary practice of law does not require it. Nevertheless, law is a profession, and three years of professional school would seem to be necessary for development of a professional identity—something that law students may be unable to fully appreciate.

To cope with the dissatisfaction, some of my colleagues propose curriculum changes. The trouble, some say, is that certain courses (for example, Civil Procedure and Constitutional Law) should be in the second or third year instead of in the first. There is always a problem determining what should come first, but sometimes it does not make much difference: should one learn the tango before the rhumba? Others of us suggest that the law school make up for what the student missed in childhood, elementary school, high school, and college. To age gracefully, though, requires that a person do the appropriate thing for his age. In common parlance: opportunity knocks only once. We may wish to live our lives over again, but mother nature will not let us. It seems to me that to study the ABC's at age 20 is a bit late.

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We frequently hear students say that they have mastered the case system by the end of the second or third semester. What are they saying? They are saying that they want new challenges. For the most part, they are bright and their grievances and complaints must be taken seriously and answered rationally. We hear them complaining, "I'm tired of briefing cases." "The first year of law school is exciting, but it's anticlimactic after that—just repetition and duplication." Re-arranging the order of courses or adding or deleting a course here and there is, in my opinion, nothing more than tinkering and will not solve the problem. At the present time, it seems to me that during the last year of the curriculum, the law student is offered a potpourri of courses and, accordingly, little opportunity to invest his energies. Law students point out that physicians, architects and others have managed to bridge the gap between theoretical training and professional proficiency, and they ask, why can't we? Some of them want specialty training, but the arguments made against specialization are rather sound. Specialization has often been defined as "learning more and more about less and less." Further, it is well recognized that after the student graduates, he may not have the opportunity to practice his preferred specialty. This is especially true of an attorney in a small town who must, in fact, be a generalist. Nearly half of the nation's practitioners have offices in cities and towns with populations of less than 200,000.

While the arguments against specialization have some validity, there is merit in providing the student the opportunity to delve deeply into an area even though he may not later practice in it. Intense experience is rewarding. Divisions of interest could be developed to advantage in the last year or year and a half: law and behavioral science for those interested in working with people; law and economics for those interested in corporations; law and estate planning for those interested in this field; etc. Failure to provide something like this in legal education was recently commented upon by Judge Bazelon of the United States Court of Appeals, when he observed: "Over seventy-five years ago, Justice Holmes pronounced that 'the life of the law is not logic but experience.' Since then the legal profession has become increasingly concerned with economic and political realities. Lawyers pride themselves on understanding how governments, corporations, and agencies really work. They also pride themselves on understanding how people work. But, in fact, their education rarely provides them with knowledge of developments [in these areas]."

Within these broad areas, as suggested, talents of other departments of the university could be tapped. One purpose of a university is to bring together the wisdom of various disciplines; does it? is there interaction? The oyster is the product of isolation. It is only when a new element or foreign body is introduced into the oyster that a pearl is pro-

duced. The university offers many riches from which to choose, but they often go untouched. The time has arrived to lower barriers which isolate one department from another. When this is accomplished, professional training will be enriched, not adversely diluted.

Through the years, the nature of the university has changed. In the past, an individual did not go to the university primarily in order to learn something about making a living—rather he went for the purpose of scholarship and to become a gentleman. Since then, academia has been professionalized. Today, the college diploma is regarded as a key to a job and, as a consequence, the student is often obsessed with the practicality and relevancy of his education to his future work and earning power. The thrust of our “selling” of education is frequently based upon the increased earning power accruing with each additional year of education. In the past, the bright student was destined for the humanities, and the less bright student for the technical fields. Today, it is usually the reverse.

When the law student reaches the second year of his education, he begins to think that he can learn more about his vocation in a law office. He believes that working gives meaning and depth to his studies, or that working is more closely related to his future than his studies actually are. Plato's counsel that the theoretical is the most practical does not really fall on deaf ears—it has rather given way to the conception that theory and practice form a unity. In some instances, doing is a valuable adjunct to talking. To take an invidious comparison: the army recruit learns in a few minutes how to make a right turn, by doing it—but by simply listening how to do it, he would probably never learn. Students completing some law courses feel that they really know nothing about the material. Not applying material makes it more difficult to learn and retain. By and large, students desire a type of internship which would allow them an opportunity to make their studies meaningful. The medical student prefers the M.D. clinical professor to the Ph.D. theoretician; he prefers an internship at a hospital where he can perform, even if it is a poor one.

Talking is not synonymous with theoretical scholarship. It would be gratuitous to say that all of the talking in law schools is theoretical scholarship; a great deal of it is how-to-do-it. If that is to be the goal, can the talking be made more effective? Can it be supplemented with doing? Are service related activities compatible with scholarship? Jacques Barzun, Dean and Provost of Columbia University before the troubles there, contends that the university's involvement with the foundations, defense and industry spending has compromised its integrity. In his book *The American University*, he proposes that universities stop prostituting themselves and settle down to good teaching. The criticism, though, is in some measure atavistic. It is painting with a broad brush

to say that *all* service related activities are incompatible with scholarship.

Clearly we must recognize the existence of a deep division of thought and outlook between much of the student body and many of the faculty. In recent years college campuses across the country have been the scene of student rebellion. Some students shrug and opt out rather than protest. However, students of law, medicine and the sciences have usually been absent from these demonstrations. They do not want "to smash reality"; they want to know what it is. They see a role for themselves in society, and the schools are rather responsive to their needs. While there is room for improvement in legal education, the law school is a citadel of learning in comparison to many other departments of the university.

It is significant that law professors are usually better paid than other faculty members. It is also true that there is a close correlation between the ranking of law schools and faculty salaries. The recognized leading law schools pay the highest salaries. As I prepare these remarks, I observe that I comment on money and prestige with reluctance, and toward the end of my allotted space, although I consider these matters to be crucial. Social science investigators have revealed that people will actually talk more freely about their sex lives than about their incomes.

False idols or no, what matters most to most people is their relative status, their self-esteem, their position in the income hierarchy. Let us consider the medical student with whom the law student often feels in rivalry. At university graduation ceremonies, law students are deeply perturbed when medical students step forward to receive their diplomas. They can be heard to say: "We'll get you." "Greenbacks." Other graduates—e.g., history, engineering—provoke no reaction.

The medical student studies diligently. He stays up until late hours of the night memorizing and cramming many facts which he often finds quite dull and tedious. He truly suffers. Why? He does so, in my opinion, mainly because of the "killing" he knows he is going to make after graduation. The strongest motives for going into medicine are the lure of money, prestige, and lust for power (which will be exercised over patients). It may very well be argued that these motives may drive men on to achievements which benefit all mankind. Be that as it may, it should be observed that they are the motives that carry them. The young generation says: "Come on, be real." "Say it like it is." Let us straightforwardly acknowledge the fact that dewy-eyed talk about the essential nobility of the medical profession is a load of old drivel. It is indeed rare when a medical student or physician can say, without blushing, that he is in medicine for altruistic reasons.

It is not unusual for a young doctor, shortly after training, to earn in excess of \$40,000 per year. When the medical student completes his

training, he knows with assurance that patients will be knocking at his door, his fees guaranteed, by insurance or medicare. The short supply of doctors (not constructively resolved by the medical profession and others) works in his favor. On the other hand, the crucial problem of the law graduate is getting clients who can pay. No course can train him for that, yet it is a most important aspect of the practice of law. Without sufficient clients, the young lawyer turns to hustling cases, or to doing work which a secretary could probably do just as well, if not better—or he leaves the law. The lawyer has many competing siblings. There are approximately 300,000 lawyers in the United States—one for every 250 of the labor force; the semi-rural state of Louisiana has more lawyers than the nation of Japan. In the last six years, without an increase in population, the number of law students in the United States nearly doubled, from 43,000 to 70,000. It is feared that this increase in numbers will further jeopardize the income of the practitioner, now at an unsatisfactory median of \$13,000.

Promise a law student something of the rewards awaiting the medical student, and interest in his studies will zoom. The promise can best be realized by cutting down on the number of law graduates and by restricting encroachments on the practice of law by accountants, bankers and others. To do so would, of course, work against other interests, namely, the public, the law student seeking admission, and also the law faculty.

Whatever the rewards, though, the big day never seems to arrive for the misbegotten, but despair is easier to take when rich. As Zero Mostel expressed it, "Money is honey."